* **HIGH COURT OF DELHI : NEW DELHI**

\+ **ITA No. 112 of 2006**

Judgment reserved on: July 10, 2007

% Judgment delivered on: July 25, 2007

Commissioner of Income Tax
Delhi-I, New Delhi. ...Appellant

Through Mr. J.R. Goel, Advocate

Versus

M/s. Capital Flour Mills Pvt. Ltd.
B-28, Lawrence Road, Industrial Area
Delhi-110035. ...Respondent

Through Mr.Sandeep Sapra, Advocate

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

MADAN B. LOKUR, J.

The Revenue has preferred this appeal under Section 260A of the Income Tax Act, 1961 (for short the Act) in respect of an order dated 26th May, 2005 passed by the Income Tax Appellate Tribunal, Delhi Bench 'B' in ITA No.1482/Del/2005 relevant for the assessment year 1998-99.

2. It appears that a search and seizure operation was carried out in respect of one Kamal Chand Jain group on 15th December, 1997. During the operation, a large number of hundi receipts were seized showing sums advanced to various persons mostly of old Delhi areas.

3. One of the hundis seized suggested that the assessee had purchased the hundi for a sum of Rs.10,00,000/- and since the amount was in cash, it was not recorded in the books of Kamal Chand Jain. A photocopy of the hundi was made available to the Assessing Officer and on this basis a notice under Section 148 of the Act was issued to the assessee on 10th May, 2001.

4. In re-assessment proceedings, the statement of one Suresh Goenka, a Director of the assessee was recorded and he denied having anything to do with the document. The Assessing Officer disbelieved the Director and made an addition of Rs.10,00,000/- to the income of the assessee under the provisions of Section 69D of the Act. He also made an addition of Rs.80,000/- being the interest paid on the loan.

5. A photocopy of the so-called hundi has been placed on our record. This is on the letterhead of the assessee and is dated 25th July, 1997. It reads as follows:

> "Received Rs.10,00,000.00 (Ten Lacs only) from Sh. Ravinder Kumar as loans interest @ 12% P.A. th. Sh. Brij Mohanji (illegible but perhaps referable to an area in Delhi-6)."

The document is signed by some person whose signature is totally illegible.

6. The Commissioner of Income Tax (Appeals) upheld the view taken by the Assessing Officer but in an appeal filed by the assessee, the Tribunal reversed. That is how the matter is now before us.

7. The Tribunal has noted that apart from the fact that the original document was not placed before the Assessing Officer and that a photocopy of the hundi has no real evidentiary value, it relied upon the decision of the Andhra Pradesh High Court in ***Commissioner of Income-tax v. Dexan Pharmaceuticals Pvt. Ltd., [1995] 214 ITR 576***. In that decision, it has been noted that "hundi" is neither defined in the Act nor in the Negotiable Instruments Act. However, it finds a mention in the Indian Stamp Act, 1899. Section 2(2) thereof defines a bill of exchange which includes a hundi.

8. Thereafter, the High Court considered various commentaries and decisions and concluded that for a transaction to be a hundi transaction, the following are necessary:-

(i) There are always three parties to such a transaction. They are the drawer, the drawee and the payee. The drawer cannot himself also be the drawee. If the transaction is

bilateral it is a very strong indication to show that it is not a hundi transaction.

(ii) A hundi is payable to satisfy a person or order but negotiable without endorsement by the payee.

(iii) The holder of a hundi is entitled to sue on its basis without any endorsement in his favour.

(iv) A hundi once accepted by the donee, could be negotiated without endorsement.

(v) In the case of loss of a hundi, the owner can claim duplicate or triplicate from the drawer and present the same to the drawee for claiming payment.

(vi) A hundi is normally in the oriental language as per the mercantile custom.

9. If we examine the document in the light of the law laid down by the Andhra Pradesh High Court, with which we have no reason to differ, it is clear that the document is not a hundi. First of all, we do not even know whose signatures are appended to the document and whether he has any connection at all with the assessee. Merely because the letterhead of the assessee has been used does not lead to any presumption one way or the other. Then we find that the transaction is bilateral. The document is written in English and not in any oriental

language. It is difficult, under these circumstances, to even hold the document to be a hundi.

10. A similar issue had arisen in ***Commissioner of Income-tax v. Paranjothi Salt Co., [1995] 211 ITR 141***. In that decision, the Madras High Court mentioned some other characteristics of a hundi, namely that it should be an unconditional order signed by the maker directing a certain person to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument. Such a document should be executed on a hundi paper. It was also observed that it may not be necessary whether the document is in an oriental language or not.

11. We find that taking the tests laid down by the Andhra Pradesh High Court as well as the Madras High Court, it would not be imperative, in this day and age, to insist upon a hundi being written only in an oriental language nor would it be necessary to insist upon the hundi being executed on a hundi paper. What is required, on a composite reading of the document and on a cumulative reading of the tests laid down, is to be able to arrive at a conclusion that the document

is nothing but a hundi as would be understood in normal commercial parlance as being a bill of exchange.

12. The document, the contents of which we have reproduced above, do not seem to suggest anything specific except that the assessee (assuming the letterhead of the assessee is genuine) received an amount from Ravinder Kumar "through" Shri Brij Mohan. Who received the amount on behalf of the assessee is not at all clear – the Director of the assessee Suresh Goenka having denied the transaction completely and who is Brij Mohan is also not clear nor is it clear who is Ravinder Kumar.

13. This being the position, we find it difficult to differ with the view taken by the Tribunal that the document is not a hundi, without even going into the evidentiary value of the photocopy. Consequently, it would be difficult to hold that the Assessing Officer had any valid reason to believe that income had escaped assessment thereby enabling him to initiate proceedings against the assessee under Section 148 of the Act.

15. In our opinion, no substantial question of law is made out by the Revenue. The appeal is dismissed.

Madan B. Lokur, J

July 25, 2007 **V.B. Gupta, J**
ncg

Certified that the corrected copy of the judgment has been transmitted in the main Server.